

District's Exhibit No. 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

- - - - -	x	
	:	
CSX TRANSPORTATION, INC.,	:	
	:	
Plaintiff,	:	
	:	
vs.	:	Civil Action No.:
	:	1:05-DV-00338
ANTHONY A. WILLIAMS and	:	
DISTRICT OF COLUMBIA,	:	Hon. Ellen Segal
	:	Huvelle
Defendants.	:	
	:	
- - - - -	x	

Washington, D.C.
Thursday, March 3, 2005

The deposition of JOHN M. GIBSON, JR.,
called for examination by counsel for Defendants,
pursuant to notice, in the offices of the
Attorney General for the District of Columbia,
Sixth Floor, 441 4th Street, N.W., Washington,
D.C., convened at 10:15 a.m., before Emma N. Lynn,
a Notary Public in and for the District of

Columbia, when were present on behalf of the

parties:

APPEARANCES:

On Behalf of the Plaintiff:

IRVIN B. NATHAN, ESQ.
MARY GABRIELLE SPRAGUE, ESQ.
Arnold & Porter LLP
555 12th Street, N.W.
Washington, D.C. 20004-1206
(202) 942-5070
irvin_nathan@aporter.com
(202) 942-5773
mary_gay_sprague@aporter.com

On Behalf of the Defendants:

MARTHA J. MULLEN, ESQ.
MATTHEW CASPARI, ESQ.
Assistant Attorney General
Office of the Attorney General
for the District of Columbia
441 4th Street, N.W.
Sixth Floor South
Washington, D.C. 20001
(202) 724-6650

Also Present:

PETER J. SHUDTZ, ESQ.
Vice President - Federal
Regulation and Washington
Counsel
CSX Corporation
Suite 560, National Place
1331 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 626-4929
peter_shudtz@csx.com

C O N T E N T S

WITNESS

EXAMINATION BY COUNSEL FOR

PLAINTIFF

DEFENDANTS

JOHN M. GIBSON, JR.

By Ms. Mullen

--

4

By Ms. Sprague

156

--

E X H I B I T S

GIBSON DEPOSITION

MARKED

No. 1

7

No. 2

13

(All exhibits retained by Ms. Mullen.)

1 plan.

2 (Witness and counsel conferring.)

3 THE WITNESS: The Virginia Avenue
4 tunnel is a fixture on CSX. It is on what is
5 commonly called the I-95 route or the north-south
6 route. It is a specific location on that line
7 just north of where passenger trains would go into
8 Union Station. So that would be freight only
9 moves associated with that particular location.

10 The next row is Virginia Avenue and
11 metropolitan capital sub-reroute and that is if
12 neither the east-west B&O line as we described in
13 the affidavit nor the north-south I-95 line are
14 available, the cars that are currently involved in
15 these STCC codes would have to take the additional
16 miles and incur the additional handlings for both
17 loads and empties shown on that line, and they are
18 totaled again on the right-hand side.

19 BY MS. MULLEN:

20 Q. How did this translate into dollars
21 and cents?

22 A. We didn't do a specific cost study for

1 any of this, for either the Virginia Avenue --
2 I-95 reroute or the north-south or east-west
3 reroute.

4 Q. Why didn't you do a cost study?

5 A. Well, there are three kinds of costs.
6 There are direct costs. There are indirect costs,
7 and then there are, you know, other outside our
8 company costs either to shippers or to the public.

9 The direct costs are a fraction of the
10 total costs, and it would be misleading to use
11 that as any kind of decision point.

12 Q. And why would it be misleading?

13 A. Because of the size of the direct
14 costs.

15 Q. Because they are a fraction of the
16 total?

17 A. Yes.

18 MR. NATHAN: Was that a yes?

19 THE WITNESS: Yes. I agree.

20 BY MS. MULLEN:

21 Q. And indirect costs?

22 A. For CSX, it would include elements of

1 Q. Can you tag that with a date?

2 A. It was in the April time frame, early
3 April, I think. But I am not 100 percent sure.

4 Q. And implementation began in May?

5 A. Well, as we, I think, tried to describe
6 in the affidavit, you can't just turn switches and
7 make this happen. It is a flow. So the diversion
8 of the flow, even once you send the instructions,
9 takes quite a bit of time. So the diversion was
10 effective beginning of May.

11 Q. And how long has the diversion taken in
12 this particular case?

13 A. I have no knowledge.

14 MS. SPRAGUE: How long did it take to
15 divert the traffic?

16 MS. MULLEN: To implement the plan. I
17 realize it is ongoing.

18 THE WITNESS: Three or four weeks from
19 the time we sent the instructions to the time we
20 believe that it was effective. Is that the
21 question?

22 MS. MULLEN: Yes.

1 THE WITNESS: Three to four weeks.

2 BY MS. MULLEN:

3 Q. Assuming for the moment that the
4 legislation that is being challenged is passed,
5 what, if anything, will you have to do differently
6 than you are doing now regarding the voluntary
7 rerouting?

8 MR. NATHAN: Assuming it becomes
9 effective?

10 MS. MULLEN: Yes.

11 THE WITNESS: We would essentially
12 rework the same steps for the different flows and
13 the different routes. So, again, you basically
14 have a 3800 STCC code by 330 yard matrix for the
15 empty moves on the I-95 corridor, the loaded
16 moves on the east-west corridor, and the empty
17 moves on the east-west corridor, and those
18 instructions would have to be bar coded, so to
19 speak, because they are exceptions to the
20 operating plan.

21 The computer, again, is constantly
22 creating a trip plan for each car, and it would

1 have to, in essence, manually extract all of that
2 from the normal flow, and then you would have to
3 allow the stuff that is in transit to thin out and
4 go away from those routes over that three-to-four
5 week period.

6 BY MS. MULLEN:

7 Q. Can you break that process down and
8 tell us specifically how that varies from what you
9 are currently doing, if it does?

10 A. It is the same basic process applied
11 against different commodities and loads and
12 empties and line segments.

13 So it is, in essence, a repeat of what
14 we have done, but for the new commodities above
15 the voluntary ones on the loaded side, go against
16 all of the empties on the north-south line, and
17 then both loads and empties and the new geography
18 of the B&O line.

19 Q. The 10 cars that you referenced
20 earlier in your testimony that have been rerouted
21 since May --

22 MS. SPRAGUE: They were not rerouted

1 since May.

2 BY MS. MULLEN:

3 Q. Those are the 10 cars not rerouted
4 since May?

5 A. That's correct.

6 Q. They contained hazardous materials or
7 they were empty?

8 A. I don't have the breakout as to
9 whether they were full or empty. I just know
10 they moved over the line segment. But I could
11 get that answer. I think those are loads. Those
12 are the loads.

13 (Witness and counsel conferring.)

14 THE WITNESS: And you understand
15 that's the difference between the voluntary and
16 the materials covered in the act.

17 BY MS. MULLEN:

18 Q. Yes, but go ahead and put that on the
19 record. Explain what you are telling me.

20 A. That since May, when we had an
21 effective reroute of the voluntary reroute, there
22 have been approximately 10 loaded cars of

1 materials covered by the D.C. Act that were not
2 covered by the voluntary.

3 So there were no -- to put it another
4 way, there were no cars, loaded cars of the
5 voluntary reroute that slipped through, if you
6 want to look at it that way.

7 (Witness and counsel conferring.)

8 THE WITNESS: Well, the four STCC
9 codes were chlorine and forms of propane. Those
10 are the ones that we voluntarily rerouted.

11 BY MS. MULLEN:

12 Q. Your affidavit doesn't deal with
13 materials other than chlorine or the propane, does
14 it?

15 A. It does with respect to the reroute.
16 This applies against the materials in the act
17 (indicating).

18 Q. Have you used the computer model to
19 determine the alleged effects of the rerouting
20 required by the D.C. Act?

21 A. Yes. That's this table (indicating)
22 and what is in the testimony.

1 MR. NATHAN: You mean Exhibit 2 and you
2 mean the affidavit?

3 THE WITNESS: Yes, that's right.

4 BY MS. MULLEN:

5 Q. Exhibit 2 is actually the extent of
6 your analysis. There are no other documents?

7 A. That's right. That's correct.

8 Q. Thank you.

9 Has this document been shared with a
10 Federal agency?

11 A. No, I don't think so. No.

12 Q. Is today the first time you are
13 producing it for anyone other than your company?

14 A. Yes.

15 Q. In using the computer to determine the
16 alleged effects of the rerouting required by the
17 D.C. Act, did you analyze the impact of rerouting
18 traffic from the CSX lines onto the Norfolk
19 Southern lines?

20 MS. SPRAGUE: Asked and answered.

21 MS. MULLEN: You can answer.

22 THE WITNESS: We did not.

1 BY MS. MULLEN:

2 Q. Did you share any sort of analysis with
3 Norfolk Southern before they refused to agree to
4 the rerouting?

5 A. No.

6 MR. NATHAN: Can I have the question
7 and answer read back.

8 (The reporter read the requested
9 portion of the record.)

10 BY MS. MULLEN:

11 Q. Have you had any conversations with
12 members of the Norfolk Southern regarding this
13 particular issue?

14 A. No.

15 Q. Do you know of anyone in your company
16 who has?

17 A. Regarding this issue? No, I don't know
18 of a specific conversation between the two.

19 Q. Did you read Mr. Osborne's affidavit?

20 A. I don't recall it. I don't recall
21 which -- I read a lot of affidavits.

22 Q. Let me show it to you.

1 loads?

2 THE WITNESS: For loads, yes. You are
3 right. So it would be 11,000 into 2 million for
4 loads and empties.

5 BY MS. MULLEN:

6 Q. You are saying "right" as to what.

7 A. Mary Gay made the comment I had only
8 looked at only the loaded car count. You should
9 look at the loaded and empty car count.

10 That would be 11,400 cars going in
11 terms of additional miles, 2,036,514 additional
12 miles. So if you divide 11,400 into 2,036,514 you
13 would have the additional miles required on
14 average per car.

15 Q. Which comes out to be?

16 A. Well, by my math that would be
17 slightly less than 200.

18 Q. That's 200 miles?

19 A. Yes.

20 Q. If rerouting of the banned materials
21 increases your company's costs, what would be
22 preventing you from increasing the rates to

1 under the D.C. Act.

2 Q. And does the 6,939 represent the
3 annual shipments before voluntary rerouting?

4 A. Before voluntary, yes. In other
5 words, the Virginia Avenue reroute is a subset of
6 the 6,939. So the impact, so to speak, of adding
7 the east-west and the loads and the empties is
8 about, depending on which column you choose, five
9 to six times the impact of the voluntary reroute.

10 Q. Tell me if this is a correct
11 statement. That in 2004 the number of cars,
12 loaded cars that traveled through the District
13 was ten.

14 A. No. No.

15 Q. What do the ten cars that you
16 referenced earlier represent?

17 A. Ten cars that I referenced earlier
18 represent from the period of May of '04 to
19 January of '05 the number of loaded cars that
20 moved on the I-95 north-south route that were
21 subject to the D.C. HAZMAT law, but not covered
22 by our voluntary reroute.

1 cars.

2 THE WITNESS: We have the number of
3 cars. What we didn't try to do is figure every
4 route every car would take discretely. The
5 computer does that. We don't need it.

6 BY MS. MULLEN:

7 Q. I was referring to the particular
8 number that would have to be rerouted to the area
9 that you were discussing, not the overall number
10 that is represented in Exhibit 2.

11 MS. SPRAGUE: Which area was he
12 discussing?

13 MS. MULLEN: He was discussing the
14 northern New Jersey and the New York City
15 metropolitan area. The question would be how
16 many cars would have to be rerouted there.

17 THE WITNESS: I don't know the answer
18 to that.

19 BY MS. MULLEN:

20 Q. I believe you testified you don't
21 know, that the data wasn't sorted?

22 A. That way. It was not sorted that way,

1 rather? I just want to make sure we have the
2 right exhibit you are referencing.

3 A. I think we need to make sure we have
4 the description. That was 34, paragraph 2. Does
5 it say which exhibit?

6 MS. SPRAGUE: E.

7 THE WITNESS: Let me look at that to
8 make sure.

9 Yes. Exhibit E.

10 BY MS. MULLEN:

11 Q. Paragraph 34 deals with hypotheticals,
12 does it not? Not actual rerouting?

13 A. No. These are both -- let me see. The
14 chlorine move is an actual move. And since the
15 traffic from Mount Holly, North Carolina going to
16 Delaware would have gone on the I-95 route, I
17 believe they are both examples of rerouting.

18 Q. Of actual rerouting?

19 A. Right. Because they are not moving
20 that way now. This Mount Holly example, if it
21 were -- it could be one of those ten cars we
22 talked about. So it is possible that it is the

1 theoretical one at this point in time. But we
2 don't have the commodity. I don't recall what
3 the commodity was.

4 Q. How would we find out what the
5 commodity was?

6 A. I would have to look.

7 Q. It would be in your records?

8 A. Yeah. I know who described that. He
9 would have that information.

10 Q. Who is that?

11 A. It is the guy that works for me.
12 Michael Swain.

13 Q. So both of these are actual examples,
14 to the best of your knowledge, of voluntary
15 rerouting?

16 A. Yes. Unless, of course, this Mount
17 Holly move happened to be one of the ten that were
18 subject to the act, but not part of the voluntary
19 rerouting.

20 Q. Thank you for clarifying that.

21 Have you increased your costs to
22 shippers affected by the rerouting at all?